state." 1 WHART. PREC. INDICTMENTS AND PLEAS, 114; 5 CHITTY, CRIM. LAW, 738. Such was the essential requirement of the common law, and when the people by their constitution ordained, "that no person shall, for felony be proceeded against criminally otherwise than by indictments," they meant an indictment as understood at common law. Most states have adopted amendments to their constitutions, or have adopted codes, which permit the prosecution of murder by information as was formerly done by indictment, and the question is, are those words, "upon his oath," as necessary to a valid information for murder as they were in the indictment. In *Rex.* v. *Wilkes,* 4 Burr. 2527, LORD MANSFIELD said, "There is this difference between informations and indictments, viz., Indictments are found upon the oaths of a grand jury and can only be amended by themselves. Whereas, informations are as declarations in the King's suit." In *State* v. *Meyers,* 99 Mo. 107, SHERWOOD, J., said, "All the authorities show the proper conclusion of an indictment for murder marks the feature of that offense which distinguishes it from manslaughter. Without such conclusion the previous words charge but the latter offense. 2 BISHOP. CRIM. PROC. §§ 536, 548, 550; 3 CHITTY, CRIM. LAW, pp. 243, 737. Then that conclusion, in order to be valid, charges murder as the result of the previously made allegations." In 2 HAWKINS, PLEAS OF THE CROWN, pp. 369, 370, it is said, "Seeing that an information differs from an indictment in little more than this; that the one is found by the oath of twelve men while the other is but the allegation of the officer who exhibits it, whatsoever is requisite in an indictment, the same, at least, is necessary also in an information; and consequently, as all the material parts of the crime must be precisely found in the one, so must they be precisely alleged in the other, and not by way of argument or recital." In *People* v. *Coleman* (1905), 186 Mo. 151, the court, on facts precisely like those of the present case, says: "The information and indictment, being of the same dignity, and for the same purpose, they must in cases of murder, be governed in their material allegations by the same law. Therefore the omission of the recital that an information for murder *is upon the oath of the prosecuting attorney* is fatal to its validity." An information that does not have this conclusion does not charge murder. *State* v. *Dawson,* 187 Mo. 60. Constitution, Art. 1, § 9, declares that no warrant shall issue, but upon probable cause, supported by oath or affirmation. *Held,* that it is not necessary that an information filed by a district attorney be verified, inasmuch as the official oath of the attorney supplies the necessary oath or affirmation. *State* v. *Guglielmo* (Oreg), 79 Pac. 577. Informations differ in nothing from indictments in form and substance except that they are filed at the mere discretion of the proper law-officer. *State* v. *Miles,* 4 Ind. 577; Whart. Am. Cr. Law, § 213. While it has been the purpose of recent legislation, and particularly of the codes, to disregard technicalities in pleadings yet we find the majority of the courts adhering to the rule as laid down in *People* v. *Coleman, supra,* that the omission of the words "on his oath" invalidates the information the same as it would invalidate the indictment.

SALES—GOOD WILL—SOLICITING OF OLD CUSTOMERS.—Defendant McGaw, who had been carrying on a long established grocery business under the firm name of George K. McGaw & Co., sold his business together with the

good will and firm name to the Acker, Merrall & Condit Co. Subsequently McGaw organized a competing firm under the name of Hopper, McGaw & Co., and proceeded to solicit the customers of the old firm. Plaintiffs now seek an injunction praying that defendants be restrained, first, from using the firm name, and, second, from soliciting the old customers. *Held,* that the first prayer must be denied on the ground that the name sold and the name used are not identical, but that the second prayer must be granted. *Acker, Merrall & Condit Co.* v. *McGaw et al.* (1906), — C. C. D. Md. —, 144 Fed. Rep. 864.

The term "good will" is of uncertain import. Says LORD ELDON in *Cruttwell* v. *Lye,* 17 Ves. Jr. 335, "The good will which has been the subject of sale is nothing more than the probability that the old customers will resort to the old place." And WOOD, V. C., in *Churton* v. *Douglas,* John. 174, "Good will must mean every positive advantage that has been acquired by the old firm in carrying on its business whether connected with the premises on which the business was formerly carried on, or with the name of the late firm, or with any other matter, carrying with it the benefit of the late business." Taking even the narrow definition of LORD ELDON, it would seem, logically, that soliciting the customers of the old firm was lessening "the probability that the old customers would return to the old place," directly depreciating the thing granted, and therefore not allowable. This doctrine, namely, that a grantor of good will can not solicit the old customers of the old firm, was first authoritatively announced in *Labouchere* v. *Dawson* (1872), L. R. 13 Eq. Cas. 322, and was followed by several subsequent cases; but was rejected by *Pearson* v. *Pearson* (1884), 27 Ch. Div. 145, and *Vernon* v. *Hallam* (1886), 34 Ch. Div. 748. It had long been settled that a sale of good will does not prevent the vendor from re-engaging in the same business in the same locality. *Cruttwell* v. *Lye* (*supra*); the only limitation being that he do not attempt to mislead the public. *Myers* v. *Buggy Co.,* 54 Mich. 215. If, it was said, one may impliedly solicit the old customers by setting up in the same business again next door, and take advantage of the prestige of his name, why draw the line here and deny him personal access? But this reasoning was rejected by *Trego* v. *Hunt* [1896], A. C. 7, which reaffirmed *Labouchere* v. *Dawson.* "It is often impossible to draw the line, and yet possible to be perfectly certain that particular acts are on one side of it or the other." *Trego* v. *Hunt, supra; Jennings* v. *Jennings* [1898], 1 Ch. 378, and *Gillingham* v. *Beddow* [1900], 2 Ch. 242, have followed *Trego* v. *Hunt.* The American cases have been influenced largely by the English. Those contrary to the principal case were, with one or two exceptions, decided subsequent to *Pearson* v. *Pearson,* and *Vernon* v. *Hallam,* (*supra*), and before *Trego* v. *Hunt.* They are: *Cottrell* v. *Babcock Printing Co.* (1886), 54 Conn. 122; *Williams* v. *Farrand* (1891), 88 Mich. 473; *Marcus Ward & Co.* v. *Ward* (1891), 15 N. Y. Supp. 913; *Vonderbank* v. *Schmidt* (1892), 44 La. Ann. 264; *Close* v. *Flesher* (1894), 28 N. Y. Supp. 737; *Vinall* v. *Hendrick* (1904), 33 Ind. App. 413 (largely dictum). In accord with the principal case are: *Moody* v. *Thomas* (1857), 1 Disney (Ohio) 294; *Burkhardt* v. *Burkhardt* (1874), 5 Ohio Decisions Reprint 185, 36 O. St. 261; *Richardson* v. *Westjohn* (1881), 6 Ohio Decisions Reprint 1043. However, *Brass &*

Iron Works v. *Payne* (1893), 50 Ohio St. 115, contains a dictum to the contrary. *Smith* v. *Gibbs* (1862), 44 N. H. 335 (dictum), *Munsey* v. *Butterfield* (1884), 133 Mass 492; *Knoedler* v. *Boussod* (1891), 47 Fed. 465 (dictum), *Newark Coal Co.* v. *Spangler* (1896), 54 N. J. Eq. 354; *Althen* v. *Vreeland* (1897), (N. J. Eq.) 36 Atl. 479; *Ranft* v. *Reimers* (1902), 200 Ill. 386; *Zanturgian* v. *Boornazian* (1903), 25 R. I. 151. It would seem, then, that the principal case accords with the decided trend of recent decisions.

SALES—RESTRAINT OF TRADE—RIGHT TO RESTRICT FUTURE SALES OF PROPRIETARY MEDICINES.—The plaintiff, a manufacturer of a proprietary medicine, made a system of contracts with certain wholesale dealers to whom alone he sold his medicine, by which they agreed to sell only to certain designated retailers and at a uniform price, and the designated retailers agreed to sell to the consumer at a certain uniform price. Plaintiff sought an injunction to restrain defendant from inducing certain wholesale dealers to sell in violation of this contract. *Held,* that such contracts were not unlawful in restraint of trade, but were reasonable provisions for the protection of the manufacturer's trade, and the injunction issued. *Hartman* v. *John D. Park & Sons Co.* (1906), — C. C. E. D. Ky. —, 145 Fed. Rep. 358.

The case raises the difficult question as to what contracts in restraint of trade are valid and what invalid. Such contracts in restraint of trade as have for their object the stifling of competition or the creation of a monopoly are invalid and no question of reasonableness is involved. *Northern Securities Co.* v. *United States,* 193 U. S. 197; *United States* v. *Addyston Pipe and Steel Co.,* 85 Fed 271. But in the large class of cases where the covenant or contract embodying the restraint of trade is ancillary to some lawful contract, and necessary to protect the convenantee or promisee in the enjoyment of the legal fruits of the contract or to protect him from the dangers of an unjust use of those fruits by the other party, such restraint may be valid. *United States* v. *Addyston Pipe and Steel Co.,* 85 Fed. 271. In this class of cases the validity of the particular restraint of trade depends upon its reasonableness, that is, whether it is essential to protect the business from invasion, by such a contract. Thus in cases where there has been a sale of a secret process or where one is employed in the manufacture of some article by a secret process, contracts in restraint of trade to protect the owner of the secret process have been held valid. *Fowler* v. *Park,* 131 U. S. 88; *Simmons Medicine Co.* v. *Simmons,* 81 Fed. 163; *Tode* v. *Gross,* 127 N. Y. 480; *Jarvis* v. *Peck,* 10 Paige (N. Y.) 119. So where one has sold his business together with the good will therein, an agreement not to engage in the same business for a period of years is valid. *Diamond Match Co.* v. *Roeber,* 106 N. Y. 473, 60 Am. R. 464. Where the restriction is essential to protect the business of one of the parties and no secret process is involved, but no attempt to form a monopoly or to directly stifle competition is made, the contracts embodying such restrictions have been held valid. *Hulse* v. *Bonsack Machine Co.,* 65 Fed. 864; *Jarvis, Adams & Co.* v. *Knapp,* 121 Fed. 34; *American Strawboard Co.* v. *Haldeman Paper Co.,* 83 Fed. 619; *Hitchcock* v. *Anthony* 83 Fed. 779; *Dunlop* v. *Gregory,* 10 N. Y. 241; *Hodge* v. *Sloan,* 107 N. Y. 244; *Oregon Nav. Co.* v. *Winson,* 20 Wall. 64. It has also